

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

DOROTHY BENTLEY,)	
as Administratrix of the Estate of)	
JERRY BUCKNER,)	
Plaintiff,)	
)	
v.)	Civil Case NO.3:07-cv-873-MHT
)	
JIMMY ABBOTT, individually,)	<u>JURY TRIAL DEMANDED</u>
BLAKE JENNINGS, individually,)	
Dr. SCHUSTER, individually, and)	
CATHY DUBOSE, individually,)	
Defendants.)	

JOINT STIPULATION OF DISMISSAL AS TO DEFENDANT DR. SCHUSTER

COMES NOW, Plaintiff Dorothy Bentley, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, and dismisses all claims against Defendant Dr. Schuster, stating as follows:

1. This case was filed on October 1, 2007. (*See* Court Doc. #1). Plaintiff file her First Amended Complaint on December 14, 2007. (*See* Court Doc. #22).
2. Defendant Dr. Schuster filed an Answer to Plaintiff's initial Complaint on January 23, 2008. (*See* Court Doc. #26). In addition, Defendant Dr. Schuster filed an Answer to Plaintiff's First Amended Complaint on January 25, 2008. (*See* Court Doc. #28).
3. Subsequently, Plaintiff received an Affidavit of Robert A. Schuster, M.D., executed on February 22, 2008, through which Dr. Schuster stated that, among other things, he "exercised the same degree of care, skill, and diligence as other similarly situated health care providers would have exercised under the same or similar circumstances . . ." (*See* Exhibit A, Affidavit of Robert A. Schuster, M.D., ¶ 8). In addition, Defendant Dr. Schuster stated that

he never “acted with deliberate indifference to any serious medical need of Mr. Buckner.” (*Id.*, ¶ 9).

4. Based on the sworn statements contained within the Affidavit of Robert A. Schuster, M.D., Plaintiff Dorothy Bentley, in conjunction with Defendant Dr. Schuster, requests that this Court dismiss her case against Defendant Dr. Schuster, without prejudice.

RESPECTFULLY SUBMITTED this the 7th day of March, 2008.

/s K. Anderson Nelms

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Counsel for Defendant Dr. Schuster

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing on the following parties and/or counsel by electronic filing through the CM/ECF system or placing a copy of the same in the United States mail, postage prepaid and properly addressed, or by hand delivery on this the 7th day of March, 2008:

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OF COUNSEL:
JESSE M. WILLIAMS, III

February 27, 2008

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LAW OFFICES OF JAY LEWIS, LLC
PO Box 5059
Montgomery, AL 36103

RE: Dorothy Bentley v. Robert A. Schuster, M.D., et al.
United States District Court for the Middle District of Alabama; 3:07-cv-873-MHT

Dear Andy:

Enclosed you will find Dr. Schuster's executed affidavit in the above noted matter. After you have had an opportunity to review this, please contact me at your first convenience so we can discuss going forward.

Thank you for your assistance in this matter.

Sincerely,



R. Brett Garrett

RBG2/kml
Enclosure
cc: Mark A. Treadwell, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

DOROTHY BENTLEY, et al., §
§
Plaintiff, § 3:07-cv-873-MHT
vs. §
§
JIMMY ABBOTT, et al., §
§
Defendants. §

AFFIDAVIT OF ROBERT A. SCHUSTER, M.D.

BEFORE ME, Robbin Moore, a notary public in and for said County and State, personally appeared **ROBERT A. SCHUSTER, M.D.**, and being duly sworn, deposed and says on oath that the averments contained in the foregoing are true to the best of his ability, information, knowledge and belief, as follows:

"My name is Robert A. Schuster, M.D. I am over the age of nineteen (19) years and have personal knowledge of the facts set forth herein. I am currently licensed to practice medicine in the State of Alabama and have been so licensed at all times relevant to the claims made the basis of Plaintiff's complaint. I currently practice medicine in Dadeville, Alabama.

I am an independent contractor providing medical services to inmates confined in the Tallapoosa County Jail on an as needed basis. At no time have I been an employee of Tallapoosa County. As such, I do not manage medical services provided to inmates by nurses in the Tallapoosa County Jail who are employees of Tallapoosa County.

It is my understanding that Plaintiff has made an allegation in this matter that the decedent, Jimmy Buckner, notified me that he was in need of unspecified medication and

that I acted negligently, willfully or wantonly in denying Mr. Buckner said medication.

Plaintiff's allegations are simply false.

A review of Mr. Buckner's medical chart indicates that Mr. Buckner has been incarcerated in the Tallapoosa County Jail on numerous occasions. On August 26, 2004 (a year before the incarceration made the basis of Plaintiff's complaint), I was contacted by a jail nurse with regard to Mr. Buckner's complaints of shortness of breath and wheezing. I was informed that Mr. Buckner claimed to have a history of heart problems associated with an enlarged heart. After receiving this information, I ordered Mr. Buckner transferred to a local hospital for evaluation. Mr. Buckner's medical chart indicates that he was transferred to LMCH at 1:45 p.m. He was returned to the Tallapoosa County Jail at 4:45 p.m. and released at 5:15 p.m. Mr. Buckner's medical records indicate that his mother was going to take him to the Veterans Administration (VA) Hospital in Montgomery, Alabama for continuing treatment upon release.

Mr. Buckner was again incarcerated at the Tallapoosa County Jail on September 12, 2005 (almost one year later). He presented with complaints of a fever and toothache on the upper left. I have no independent recollection of being contacted on this date with regard to these complaints, but, Mr. Buckner's medical chart indicates either (1) that I was contacted by the jail nurse with regard to his complaints and prescribed Ibuprofen (a pain relieving medication), or (2) that the jail nurse provided Mr. Buckner Ibuprofen under my name pursuant to a standing order. In any event, I was not asked to physically evaluate Mr. Buckner on September 12, 2005.

As an independent contracting physician, I evaluate inmates pursuant to his or her request via sick call, or, in the alternative, at the request of a jail nurse. Mr. Buckner did

not request to see me in September 2005 (via sick call or otherwise) and I was not asked to evaluate Mr. Buckner by any jail nurse.

At all times, I have exercised the same degree of care, skill, and diligence as other similarly situated health care providers would have exercised under the same or similar circumstances in providing medical care to Mr. Buckner. In other words, it is my opinion that the appropriate standard of care has been adhered to at all times in providing medical care, evaluation, and treatment to this inmate.

At no time have I denied Mr. Buckner any needed medical treatment, nor have I ever acted with deliberate indifference to any serious medical need of Mr. Buckner. At all times, Mr. Buckner's medical complaints and conditions have been addressed as promptly as possible under the circumstances."

Further, affiant sayeth not.


ROBERT A. SCHUSTER, M.D.

STATE OF ALABAMA)
COUNTY OF Tallapoosa)

Sworn to and subscribed before me on this the 22 day of Feb,
2008.

Rashin Moore
Notary Public
My Commission Expires: 4-22-11